v. *Pease* (1898) 6 Idaho 131, 53 Pac. 399. But, where the facts alleged constitute an equitable cause of action only, and the proof discloses a legal cause of action, not alleged, the court can grant no relief except that warranted by the allegations. *Freeman* v. *Miller* (1913) 157 App. Div. 715, 142 N. Y. Supp. 797; *cf. Hayes* v. *Fine* (1891) 91 Cal. 391, 27 Pac. 772. This result may be justified under the doctrine that the defendant must not be surprised, and also upon the ground of variance. The principal case falls within the rule last discussed and is clearly sound.

PRINCIPAL AND AGENT—LOYALTY—WRONGFUL DISCHARGE.—The plaintiff, who was to receive commissions from a corporation on the proceeds of a sale to be made by the corporation to the defendant, entered the employment of the latter before the purchase price of the sale had been agreed upon. The plaintiff was dismissed, and in an action for wrongful discharge, the court instructed that he was absolved as a matter of law from disclosing his interest in the sale to the defendant, and refused to charge that actual fraud was unnecessary to justify the dismissal. *Held,* on appeal, that the trial court was in error on both points. *Marshall, Admx.* v. *Sackett & Wilhelms Co.* (App. Div. 2nd Dept. 1917) 168 N. Y. Supp. 259.

Since an employee cannot place himself in such a position that his interests may conflict with those of his employer, *Frances etc. Co.* v. *McKay* (1914) 37 Nev. 191, 141 Pac. 456; 1 Labatt, Master and Servant (2nd ed.) § 284, he is legally obligated to disclose any interest which would tend directly to place him in such a position before accepting employment in a confidential capacity. *Wells* v. *Cochran* (1915) 98 Neb. 725, 154 N. W. 245; *Dunne* v. *English* (1874) 31 L. T. (N. S.) 75. Moreover, the courts will protect the employer from the possibility of corruption as well as from actual corruption of the employee. *Hammond* v. *Bookwalter* (1895) 12 Ind. App. 177, 39 N. E. 872; see *Meek* v. *Hurst* (1909) 223 Mo. 688, 122 S. W. 1022. Consequently, it is the duty of an employee to refrain from engaging in a transaction which would tend in any manner to prevent him from giving disinterested advice to his employer in respect to matters within the scope of his employment. *Pearce* v. *Foster* (1886) 54. L. T. (N. S.) 664; *Priestman* v. *Bradstreet* (1888) 15 Ont. Rep. 558. Hence an agent is not permitted, in connection with transactions involving his discretionary authority, to bargain with a third party for secret commissions. *Federal etc. Co.* v. *Angehrn* (1910) 103 L. T. (N. S.) 150; *Morrison v. Ogdensburg etc. R. R.* (N. Y. 1868) 52 Barb. 173. This is true even though his employer suffers no pecuniary loss and though the agent is not in fact biased by his dealings with the third party. *Harrington* v. *Victoria etc. Co.* (1878) 39 L. T. (N. S.) 120; *cf. Wade* v. *William Barr Dry Goods Co.* (1911) 155 Mo. App. 405, 134 S. W. 1084. Therefore, an agent can maintain no action for secret commissions; *Harrington* v. *Victoria etc. Co., supra;* and if he has already received them under a bargain therefor he will be compelled to hold them for the use of his employer. *Boston Deep Sea etc. Co.* v. *Ansell* (1888) 59 L. T. (N. S.) 345. It follows, that where an agent has engaged in any transaction, though it be single and isolated, prejudicial to his employer's interest, there is sufficient justification for a dismissal of the agent. *Boston Deep Sea etc. Co.* v. *Ansell, supra.* The decision in the principal case would, therefore, seem to be correct.